IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLAE SIDE

Writ Petition No. 4035 of 2007

The Solapur Social Association ..Petitioner

vs.

The Joint Charity Commissioner
and others ..Respondents

Shri V.B.Naik for petitioner
Shri P.P.Kakade, A.G.P. for respondent nos. 1 to 3

CORAM: S.C.DHARMADHIKARI J.
4th **July, 2007**

P.C.

1. Rule. Learned A.G.P. for respondents waives service. Petition is taken up by consent for hearing forthwith.

2. The petitioner Trust is aggrieved by the order passed by the Joint Charity Commissioner,Latur Region, Latur on 6th February, 2007 rejecting the application which is preferred by the Trust being Enquiry Application No.17 of 2006 invoking the powers of the Charity Commissioner under sec.36(1)(a) of the Bombay Public Trust Act, 1950.

3. It is not necessary to refer to the section in detail nor the powers of the Charity Commissioner under the same. It is not as if the Trust is disputing that it is not obliged to seek pernmission. Such permission is necessary as prior alienation/sale is contemplated of a Trust

property. The Trust has also pointed out the compelling necessity in the application. It has also pointed out that there are purchasers who are willing to buy the property which is encumbered and in the heart of Solapur city.

4. The Charity Commissioner has proceeded to reject the application despite being aware as to why the Trust has approached him. The reasoning inpara 8 of the impugned order reads thus:

> "There is no explanation from management of the Trust nor they did utter single word in the application (Exh.01) as to how they raised private loan in the tune of about Rs.39,00,000/- for the construction of college building. The management of Trust ought to have sought permission of this authority as provided under Sec.36 of the Bombay Public rusts Act, 1950 for raising the loan from any person or financial institute. It appears that the management of Trust raised loan in the tune of Rs.39,00,000/- from ten individuals and out of them, M/s Supariwala Exports advanced Rs.25,00,000/- without interest for the reasons best known to them. In view of this, only point which need to be considered while according permission for alienation of trust property is

> "whether the trust property can be allowed to be disposed off for the repayment of loan raised by the management of the Trust without prior permission of this authority. Definitely, aforesaid transaction of hand loan inbetween individuals mentioned in the letter granted by Chartered Accountant and Annexure A is against the provisions of law and, therefore, illegal. In my opinion, for the repayment of amaount towards illegal transaction permission cannot be accorded to dispose off the valuable trust property."'

Thereafter in para 9 of the impugned order the Joint Charity Commissioner has referred to the fact that the tenants are not vacating the property, the litigation is pending and that adequate offer to buy the property has been made and reiterated before him. In such circumstances, the Charity Commissioner could not have rejected the application. The Charity Commissioner was obliged to consider the application on its own merits and in accordance with law. While doing so, it was always open for him to go into the aspect of compelling necessity as well. While upholding the interest of the Trust in question the necessity to dispose of this property was an aspect which was very much germane and should have been gone into by the Joint Charity Commissioner. His order, therefore, cannot be sustained in the present facts and

circumstances. It is accordingly set aside and the application preferred by the petitioner is restored to its file for being disposed of afresh on merits and in accordance with law uninfluenced by the observations in the order under challenge. Rule is made absolute accordingly. No order as to costs.

(S.C.DHARMADHIKARI J.)